IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1157 of 2007

Syed Noorullah .. Petitioner

Vs

1. The State of Tamil Nadu rep. by its
   Secretary to Government
   Prohibition and Excise XII Department
   St. George Fort, Chennai-600 009.

2. District Magistrate and
   District Collector
   Thiruvannamalai
   Thiruvannamalai District. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mrs.N.Dinslin Shelta Rani
For Respondents : Mr.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, who is the husband of detenue, Sayathi, who was incarcerated by order dated 25.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent in D.O.No.33/2007-C2 against the petitioner's wife, Sayathi, now confined at Special Prison for Women, Vellore to set aside the same and to direct the respondents to produce the above said detenue before this Court and set her at liberty.

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2. On the basis of the complaint given by one Musthafa on 3.7.2007 at 10.30 hours before the Sub Inspector of Police, Vandavasi South Police Station, that on 3.7.2007 at about 8.00 hours, he purchased two tumblers of I.D. arrack from the detenue and after consuming the same, he felt burning sensation in his eyes, stomach and throat, giddiness, vomitting, blurring vision and fell down, a case was registered in Crime No.89 of 2007 under Sections 4(1-A), 4(1)(aaa) read with 4(1)(i) of the Tamil Nadu Prohibition Act. The chemical analysis report revealed that illicit arrack contained atropine of 6.9 mg per 100ml.

3. The second respondent, taking note of this case as a ground case and finding that there are eight adverse cases pending against the detenue in Crime Nos.56/2003, 206/2005, 127/2006, 445/2006, 449/2006, 705/2006, 720/2006 and 71/2007 on the file of Vandavasi South Police Station for the offences punishable under Sections 4(1)(i), 4(1)(a), 4(1)(aa), 4(1)(aaa), 4(1)(aaa) read with 4(1-A)(ii)of the Tamil Nadu Prohibition Act and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention mainly on the ground of delay in preparing the rejection order, while considering the representation dated 8.8.2007. Hence, we do not propose to go into the other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no

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period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 25.7.2007, a representation was made on behalf of the detenue on 8.8.2007, which was received by the Government on 13.8.2007. Remarks were called for from the detaining authority on 14.8.2007, which was received by the detaining authority on 16.8.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 16.8.2007 and on receipt of the same on 20.8.2007, the detaining authority sent it to the Government on the same day, viz. 20.8.2007, which was received on 21.8.2007. Thereafter, the file was submitted on 22.8.2007 and the same was considered by the Under Secretary and Additional Secretary on 23.8.2007 itself. The file was considered by the Minister on 24.8.2007. However, the rejection letter was prepared on 29.8.2007, after a delay of five days, which is not properly explained. Even taking note of the intervening holidays, viz., 25.8.2007 and 26.8.2007 (being Saturday and Sunday), the delay of three days in preparing the rejection order is admittedly unexplained and inexcusable. Thereafter, the rejection order was sent on 30.9.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and

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like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is a delay of three days in preparing the rejection order, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

kpl

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise XII Department
   St. George Fort, Chennai-600 009.

2. The District Magistrate and
   District Collector
   Thiruvannamalai
   Thiruvannamalai District.

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3. The Public Prosecutor
   High Court, Madras.

4. THE JOINT SECRETARY TO GOVT OF TAMILNADU,
   PUBLIC (LAW AND ORDER) DEPARTMENT,
   FORT ST GEORGE, CHENNAI.

5. THE SUPERINTENDENT SPECIAL
    PRISON FOR WOMEN, VELLORE.

JRG (co)
sg 22/11/07

HCP No.1157 of 2007.
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